

Calendar No. 1048

110TH CONGRESS
2D SESSION**S. 3548**

To approve the United States-India Agreement for Cooperation on Peaceful
Uses of Nuclear Energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23 (legislative day, SEPTEMBER 17), 2008

Mr. DODD, from the Committee on Foreign Relations, reported the following
original bill; which was read twice and placed on the calendar

A BILL

To approve the United States-India Agreement for Coopera-
tion on Peaceful Uses of Nuclear Energy, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “United States-India Nuclear Cooperation Approval and
6 Nonproliferation Enhancement Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

TITLE I—APPROVAL OF UNITED STATES-INDIA AGREEMENT FOR
COOPERATION ON PEACEFUL USES OF NUCLEAR ENERGY

Sec. 101. Approval of Agreement.

Sec. 102. Declarations of policy; certification requirement; rule of construction.

Sec. 103. Additional Protocol between India and the IAEA.

Sec. 104. Implementation of Safeguards Agreement between India and the
IAEA.

Sec. 105. Modified reporting to Congress.

TITLE II—STRENGTHENING UNITED STATES NONPROLIFERA-
TION LAW RELATING TO PEACEFUL NUCLEAR COOPERATION

Sec. 201. Procedures regarding a subsequent arrangement on reprocessing.

Sec. 202. Initiatives and negotiations relating to agreements for peaceful nu-
clear cooperation.

Sec. 203. Actions required for resumption of peaceful nuclear cooperation.

Sec. 204. United States Government policy at the Nuclear Suppliers Group to
strengthen the international nuclear nonproliferation regime.

Sec. 205. Conforming amendments.

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) AGREEMENT.—The term “United States-
4 India Agreement for Cooperation on Peaceful Uses
5 of Nuclear Energy” or “Agreement” means the
6 Agreement for Cooperation Between the Government
7 of the United States of America and the Govern-
8 ment of India Concerning Peaceful Uses of Nuclear
9 Energy that was transmitted to Congress by the
10 President on September 10, 2008.

11 (2) APPROPRIATE CONGRESSIONAL COMMIT-
12 TEES.—The term “appropriate congressional com-
13 mittees” means the Committee on Foreign Affairs of
14 the House of Representatives and the Committee on
15 Foreign Relations of the Senate.

1 **TITLE I—APPROVAL OF UNITED**
2 **STATES-INDIA AGREEMENT**
3 **FOR COOPERATION ON**
4 **PEACEFUL USES OF NUCLEAR**
5 **ENERGY**

6 **SEC. 101. APPROVAL OF AGREEMENT.**

7 (a) IN GENERAL.—Notwithstanding the provisions
8 for congressional consideration and approval of a proposed
9 agreement for cooperation in section 123 b. and d. of the
10 Atomic Energy Act of 1954 (42 U.S.C. 2153 (b) and (d)),
11 Congress hereby approves the United States-India Agree-
12 ment for Cooperation on Peaceful Uses of Nuclear En-
13 ergy, subject to subsection (b).

14 (b) APPLICABILITY OF ATOMIC ENERGY ACT OF
15 1954, HYDE ACT, AND OTHER PROVISIONS OF LAW.—
16 The Agreement shall be subject to the provisions of the
17 Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the
18 Henry J. Hyde United States-India Peaceful Atomic En-
19 ergy Cooperation Act of 2006 (22 U.S.C. 8001 et. seq;
20 Public Law 109–401), and any other applicable United
21 States law as if the Agreement had been approved pursu-
22 ant to the provisions for congressional consideration and
23 approval of a proposed agreement for cooperation in sec-
24 tion 123 b. and d. of the Atomic Energy Act of 1954.

1 (c) SUNSET OF EXEMPTION AUTHORITY UNDER
 2 HYDE ACT.—Section 104(f) of the Henry J. Hyde United
 3 States-India Peaceful Atomic Energy Cooperation Act of
 4 2006 (22 U.S.C. 8003(f)) is amended by striking “the en-
 5 actment of” and all that follows through “agreement” and
 6 inserting “the date of the enactment of the United States-
 7 India Nuclear Cooperation Approval and Nonproliferation
 8 Enhancement Act”.

9 **SEC. 102. DECLARATIONS OF POLICY; CERTIFICATION RE-**
 10 **QUIREMENT; RULE OF CONSTRUCTION.**

11 (a) DECLARATIONS OF POLICY RELATING TO MEAN-
 12 ING AND LEGAL EFFECT OF AGREEMENT.—Congress de-
 13 clares that it is the understanding of the United States
 14 that the provisions of the United States-India Agreement
 15 for Cooperation on Peaceful Uses of Nuclear Energy have
 16 the meanings conveyed in the authoritative representa-
 17 tions provided by the President and his representatives to
 18 the Congress and its committees prior to September 20,
 19 2008, regarding the meaning and legal effect of the Agree-
 20 ment.

21 (b) DECLARATIONS OF POLICY RELATING TO TRANS-
 22 FER OF NUCLEAR EQUIPMENT, MATERIALS, AND TECH-
 23 NOLOGY TO INDIA.—Congress makes the following dec-
 24 larations of policy:

1 (1) Pursuant to section 103(a)(6) of the Henry
2 J. Hyde United States-India Peaceful Atomic En-
3 ergy Cooperation Act of 2006 (22 U.S.C.
4 8002(a)(6)), in the event that nuclear transfers to
5 India are suspended or terminated pursuant to title
6 I of such Act (22 U.S.C. 8001 et seq.), the Atomic
7 Energy Act of 1954 (42 U.S.C. 2011 et seq.), or
8 any other United States law, it is the policy of the
9 United States to seek to prevent the transfer to
10 India of nuclear equipment, materials, or technology
11 from other participating governments in the Nuclear
12 Suppliers Group (NSG) or from any other source.

13 (2) Pursuant to section 103(b)(10) of the
14 Henry J. Hyde United States-India Peaceful Atomic
15 Energy Cooperation Act of 2006 (22 U.S.C.
16 8002(b)(10)), any nuclear power reactor fuel reserve
17 provided to the Government of India for use in safe-
18 guarded civilian nuclear facilities should be commensurate
19 with reasonable reactor operating requirements.
20

21 (c) CERTIFICATION REQUIREMENT.—Before ex-
22 changing diplomatic notes pursuant to Article 16(1) of the
23 Agreement, the President shall certify to Congress that
24 entry into force and implementation of the Agreement
25 pursuant to its terms is consistent with the obligation of

1 the United States under the Treaty on the Non-Prolifera-
 2 tion of Nuclear Weapons, done at Washington, London,
 3 and Moscow July 1, 1968, and entered into force March
 4 5, 1970 (commonly known as the “Nuclear Non-Prolifera-
 5 tion Treaty”), not in any way to assist, encourage, or in-
 6 duce India to manufacture or otherwise acquire nuclear
 7 weapons or other nuclear explosive devices.

8 (d) RULE OF CONSTRUCTION.—Nothing in the
 9 Agreement shall be construed to supersede the legal re-
 10 quirements of the Henry J. Hyde United States-India
 11 Peaceful Atomic Energy Cooperation Act of 2006 or the
 12 Atomic Energy Act of 1954.

13 **SEC. 103. ADDITIONAL PROTOCOL BETWEEN INDIA AND**
 14 **THE IAEA.**

15 Congress urges the Government of India to sign and
 16 adhere to an Additional Protocol with the International
 17 Atomic Energy Agency (IAEA), consistent with IAEA
 18 principles, practices, and policies, at the earliest possible
 19 date.

20 **SEC. 104. IMPLEMENTATION OF SAFEGUARDS AGREEMENT**
 21 **BETWEEN INDIA AND THE IAEA.**

22 Licenses may be issued by the Nuclear Regulatory
 23 Commission for transfers pursuant to the Agreement only
 24 after the President determines and certifies to Congress
 25 that—

1 (1) the Agreement Between the Government of
 2 India and the International Atomic Energy Agency
 3 for the Application of Safeguards to Civilian Nuclear
 4 Facilities, as approved by the Board of Governors of
 5 the International Atomic Energy Agency on August
 6 1, 2008 (the “Safeguards Agreement”), has entered
 7 into force; and

8 (2) the Government of India has filed a declara-
 9 tion of facilities pursuant to paragraph 13 of the
 10 Safeguards Agreement that is not materially incon-
 11 sistent with the facilities and schedule described in
 12 paragraph 14 of the separation plan presented in the
 13 national parliament of India on May 11, 2006, tak-
 14 ing into account the later initiation of safeguards
 15 than was anticipated in the separation plan.

16 **SEC. 105. MODIFIED REPORTING TO CONGRESS.**

17 (a) INFORMATION ON NUCLEAR ACTIVITIES OF
 18 INDIA.—Subsection (g)(1) of section 104 of the Henry J.
 19 Hyde United States-India Peaceful Atomic Energy Co-
 20 operation Act of 2006 (22 U.S.C. 8003) is amended—

21 (1) by redesignating subparagraphs (B), (C),
 22 and (D) as subparagraphs (C), (D), and (E), respec-
 23 tively; and

24 (2) by inserting after subparagraph (A) the fol-
 25 lowing new subparagraph:

1 “(B) any material inconsistencies between
 2 the content or timeliness of notifications by the
 3 Government of India pursuant to paragraph
 4 14(a) of the Safeguards Agreement and the fa-
 5 cilities and schedule described in paragraph
 6 (14) of the separation plan presented in the na-
 7 tional parliament of India on May 11, 2006,
 8 taking into account the later initiation of safe-
 9 guards than was anticipated in the separation
 10 plan;”.

11 (b) IMPLEMENTATION AND COMPLIANCE REPORT.—

12 Subsection (g)(2) of such section is amended—

13 (1) in subparagraph (K)(iv), by striking “and”
 14 at the end;

15 (2) in subparagraph (L), by striking the period
 16 at the end and inserting “; and”; and

17 (3) by adding at the end the following new sub-
 18 paragraph:

19 “(M) with respect to the United States-
 20 India Agreement for Cooperation on Peaceful
 21 Uses of Nuclear Energy (hereinafter in this
 22 subparagraph referred to as the ‘Agreement’)
 23 approved under section 101(a) of the United
 24 States-India Nuclear Cooperation Approval and
 25 Nonproliferation Enhancement Act—

1 “(i) a listing of—

2 “(I) all provision of sensitive nu-
3 clear technology to India, and other
4 such information as may be so des-
5 ignated by the United States or India
6 under Article 1(Q); and

7 “(II) all facilities in India noti-
8 fied pursuant to Article 7(1) of the
9 Agreement;

10 “(ii) a description of—

11 “(I) any agreed safeguards or
12 any other form of verification for by-
13 product material decided by mutual
14 agreement pursuant to the terms of
15 Article 1(A) of the Agreement;

16 “(II) research and development
17 undertaken in such areas as may be
18 agreed between the United States and
19 India as detailed in Article 2(2)(a.) of
20 the Agreement;

21 “(III) the civil nuclear coopera-
22 tion activities undertaken under Arti-
23 cle 2(2)(d.) of the Agreement;

24 “(IV) any United States efforts
25 to help India develop a strategic re-

1 serve of nuclear fuel as called for in
2 Article 2(2)(e.) of the Agreement;

3 “(V) any United States efforts to
4 fulfill political commitments made in
5 Article 5(6) of the Agreement;

6 “(VI) any negotiations that have
7 occurred or are ongoing under Article
8 6(iii.) of the Agreement; and

9 “(VII) any transfers beyond the
10 territorial jurisdiction of India pursu-
11 ant to Article 7(2) of the Agreement,
12 including a listing of the receiving
13 country of each such transfer;

14 “(iii) an analysis of—

15 “(I) any instances in which the
16 United States or India requested con-
17 sultations arising from concerns over
18 compliance with the provisions of Ar-
19 ticle 7(1) of the Agreement, and the
20 results of such consultations; and

21 “(II) any matters not otherwise
22 identified in this report that have be-
23 come the subject of consultations pur-
24 suant to Article 13(2) of the Agree-
25 ment, and a statement as to whether

1 such matters were resolved by the end
 2 of the reporting period; and
 3 “(iv) a statement as to whether—
 4 “(I) any consultations are ex-
 5 pected to occur under Article 16(5) of
 6 the Agreement; and
 7 “(II) any enrichment is being
 8 carried out pursuant to Article 6 of
 9 the Agreement.”.

10 **TITLE II—STRENGTHENING**
 11 **UNITED STATES NON-**
 12 **PROLIFERATION LAW RELAT-**
 13 **ING TO PEACEFUL NUCLEAR**
 14 **COOPERATION**

15 **SEC. 201. PROCEDURES REGARDING A SUBSEQUENT AR-**
 16 **RANGEMENT ON REPROCESSING.**

17 (a) IN GENERAL.—Notwithstanding section 131 of
 18 the Atomic Energy Act of 1954 (42 U.S.C. 2160), no pro-
 19 posed subsequent arrangement concerning arrangements
 20 and procedures regarding reprocessing or other alteration
 21 in form or content, as provided for in Article 6 of the
 22 Agreement, shall take effect until the requirements speci-
 23 fied in subsection (b) are met.

24 (b) REQUIREMENTS.—The requirements referred to
 25 in subsection (a) are the following:

1 (1) The President transmits to the appropriate
2 congressional committees a report containing—

3 (A) the reasons for entering into such pro-
4 posed subsequent arrangement;

5 (B) a detailed description, including the
6 text, of such proposed subsequent arrangement;
7 and

8 (C) a certification that the United States
9 will pursue efforts to ensure that any other na-
10 tion that permits India to reprocess or other-
11 wise alter in form or content nuclear material
12 that the nation has transferred to India or nu-
13 clear material and by-product material used in
14 or produced through the use of nuclear mate-
15 rial, non-nuclear material, or equipment that it
16 has transferred to India requires India to do so
17 under similar arrangements and procedures.

18 (2) A period of 30 days of continuous session
19 (as defined by section 130 g.(2) of the Atomic En-
20 ergy Act of 1954 (42 U.S.C. 2159 (g)(2)) has
21 elapsed after transmittal of the report required
22 under paragraph (1).

23 (c) RESOLUTION OF DISAPPROVAL.—Notwith-
24 standing the requirements in subsection (b) having been
25 met, a subsequent arrangement referred to in subsection

1 (a) shall not become effective if during the time specified
 2 in subsection (b)(2), Congress adopts, and there is en-
 3 acted, a joint resolution stating in substance that Con-
 4 gress does not favor such subsequent arrangement. Any
 5 such resolution shall be considered pursuant to the proce-
 6 dures set forth in section 130 i. of the Atomic Energy Act
 7 of 1954 (42 U.S.C. 2159 (i)), as amended by section 205
 8 of this Act.

9 **SEC. 202. INITIATIVES AND NEGOTIATIONS RELATING TO**
 10 **AGREEMENTS FOR PEACEFUL NUCLEAR CO-**
 11 **OPERATION.**

12 Section 123 of the Atomic Energy Act of 1954 (42
 13 U.S.C. 2153) is amended by adding at the end the fol-
 14 lowing:

15 “e. The President shall keep the Com-
 16 mittee on Foreign Affairs of the House of Rep-
 17 resentatives and the Committee on Foreign Re-
 18 lations of the Senate fully and currently in-
 19 formed of any initiative or negotiations relating
 20 to a new or amended agreement for peaceful
 21 nuclear cooperation pursuant to this section
 22 (except an agreement arranged pursuant to sec-
 23 tion 91 c., 144 b., 144 c., or 144 d., or an
 24 amendment thereto).”.

1 **SEC. 203. ACTIONS REQUIRED FOR RESUMPTION OF**
2 **PEACEFUL NUCLEAR COOPERATION.**

3 Section 129 a. of the Atomic Energy Act of 1954 (42
4 U.S.C. 2158 (a)) is amended by striking “Congress adopts
5 a concurrent resolution” and inserting “Congress adopts,
6 and there is enacted, a joint resolution”.

7 **SEC. 204. UNITED STATES GOVERNMENT POLICY AT THE**
8 **NUCLEAR SUPPLIERS GROUP TO STRENGTH-**
9 **EN THE INTERNATIONAL NUCLEAR NON-**
10 **PROLIFERATION REGIME.**

11 (a) CERTIFICATION.—Before exchanging diplomatic
12 notes pursuant to Article 16(1) of the Agreement, the
13 President shall certify to the appropriate congressional
14 committees that it is the policy of the United States to
15 work with members of the Nuclear Suppliers Group
16 (NSG), individually and collectively, to agree to further
17 restrict the transfers of equipment and technology related
18 to the enrichment of uranium and reprocessing of spent
19 nuclear fuel.

20 (b) PEACEFUL USE ASSURANCES FOR CERTAIN BY-
21 PRODUCT MATERIAL.—The President shall seek to
22 achieve, by the earliest possible date, either within the
23 NSG or with relevant NSG Participating Governments,
24 the adoption of principles, reporting, and exchanges of in-
25 formation as may be appropriate to assure peaceful use
26 and accounting of by-product material in a manner that

1 is substantially equivalent to the relevant provisions of the
2 Agreement.

3 (c) REPORT.—

4 (1) IN GENERAL.—Not later than six months
5 after the date of the enactment of this Act, and
6 every six months thereafter, the President shall
7 transmit to the appropriate congressional commit-
8 tees a report on efforts by the United States pursu-
9 ant to subsections (a) and (b).

10 (2) TERMINATION.—The requirement to trans-
11 mit the report under paragraph (1) terminates on
12 the date on which the President transmits a report
13 pursuant to such paragraph stating that the objec-
14 tives in subsections (a) and (b) have been achieved.

15 **SEC. 205. CONFORMING AMENDMENTS.**

16 Section 130 i. of the Atomic Energy Act of 1954 (42
17 U.S.C. 2159 (i)) is amended—

18 (1) in paragraph (1), by striking “means a joint
19 resolution” and all that follows through “, with the
20 date” and inserting the following: “means—

21 “(A) for an agreement for cooperation pursuant
22 to section 123 of this Act, a joint resolution, the
23 matter after the resolving clause of which is as fol-
24 lows: ‘That the Congress (does or does not) favor

1 the proposed agreement for cooperation transmitted
2 to the Congress by the President on _____ .’,

3 “(B) for a determination under section 129 of
4 this Act, a joint resolution, the matter after the re-
5 solving clause of which is as follows: ‘That the Con-
6 gress does not favor the determination transmitted
7 to the Congress by the President on _____ .’,
8 or

9 “(C) for a subsequent arrangement under sec-
10 tion 201 of the United States-India Nuclear Co-
11 operation Approval and Nonproliferation Enhance-
12 ment Act, a joint resolution, the matter after the re-
13 solving clause of which is as follows: ‘That the Con-
14 gress does not favor the subsequent arrangement to
15 the Agreement for Cooperation Between the Govern-
16 ment of the United States of America and the Gov-
17 ernment of India Concerning Peaceful Uses of Nu-
18 clear Energy that was transmitted to Congress by
19 the President on September 10, 2008.’,
20 with the date”; and

21 (2) in paragraph (4)—

22 (A) by inserting after “45 days after its in-
23 troduction” the following “(or in the case of a
24 joint resolution related to a subsequent ar-
25 rangement under section 201 of the United

1 States-India Nuclear Cooperation Approval and
2 Nonproliferation Enhancement Act, 15 days
3 after its introduction)”; and

4 (B) by inserting after “45-day period” the
5 following: “(or in the case of a joint resolution
6 related to a subsequent arrangement under sec-
7 tion 201 of the United States-India Nuclear Co-
8 operation Approval and Nonproliferation En-
9 hancement Act, 15-day period)”.

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A BILL

To approve the United States-India Agreement for
Cooperation on Peaceful Uses of Nuclear Energy,
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